SUPERIOR COURT, STATE OF ARIZONA, IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA **(Plaintiff)** **vs.** **STEVEN CARROLL DEMOCKER** **(Defendant)**	**Case No. P1300CR20081339** **RULING RE: EVIDENCE**	**FILED** **DATE:** 08-13-2010 5:30 **O'Clock** P **M.** **JEANNE HICKS, CLERK** **BY:** J. Mills **Deputy**

HONORABLE Warren R. Darrow	**BY: Robin Gearhart / Judicial Assistant Division Six**
DIVISION SIX	**DATE: August 13, 2010**

This ruling is based on an effort to make an objective assessment of evidence that the parties have indicated may be offered in this case. The Court is not expressing any opinion as to the strength of the evidence or the logic of any arguments relating to the evidence, except to the extent necessary to apply the rules of evidence in the context of what is, in effect, a motion in limine.

The State alleges that the crimes were committed for purposes of financial gain. The State has indicated that it intends to offer evidence that the Defendant made a claim for the insurance proceeds in August, 2008. Thus, as the Court has stated previously, the insurance policies have been an issue from the beginning of this case; the issue addressed here did not first appear during the opening statement of defense counsel.

The Defendant has asserted that he intends to prove: (1) that Mr. DeMocker, in fact, disclaimed any interest in the insurance proceeds; and (2) that the proceeds went to Mr. DeMocker's daughters.

The information provided to this Court, primarily through the letters of Mr. Schmitt and Ms. Appel, indicates that the formal disclaimer had no legal effect. According to these attorneys, the law is clear that Mr. DeMocker lost any right to the life insurance proceeds once the dissolution of his marriage to Carol Kennedy was final. Mr. Schmitt's letter to Hartford Insurance suggests that the only purpose for the written disclaimer was to provide additional assurance to the insurance company that the proceeds could be disbursed to the other beneficiaries without incurring the risk of liability to Mr. DeMocker. Apparently, this "belt and suspenders" approach, as it was described by Mr. Schmitt, was

[X] County Atty [X] Def Atty J. SEARS OSBORN MALEDON
[X] Victim Witness
[ ] APD [ ] YSCO/Jail [ ] YSCO/Warrants
[ ] DOC [ ] Div_____ w/file TOTAL_____
[X] Other PD [X] Other J. NAPPER
[ ] Dispo. Clk [ ] Obligations EXC. DUPONT

designed to speed up the process of receiving the insurance payments so that the money could be used for the benefit of Mr. DeMocker in the form of paying legal fees and other costs associated with his defense in this case. In other words, the written disclaimer might serve to accelerate the inevitable process of the funds going to the trust and then to the costs of defense. Thus, there is evidence that although Mr. DeMocker signed a formal written disclaimer with no actual legal effect, he did not disclaim an actual personal interest in obtaining the funds for his defense.

A dictionary definition of "disclaim" – a definition which presumably would be employed by the jury – includes the synonyms "disown," "renounce," and "reject." The transcript of the March 17, 2009, conversation between Mr. DeMocker and his daughter Katie, a conversation that the Court has referred to previously, could suggest that Mr. DeMocker did not disown, reject, or renounce the insurance proceeds. This conversation might suggest that there was a family plan for the money from the life insurance policies – this plan being that Mr. DeMocker would have control of this money to use for the benefit of his daughters; however, evidence may suggest that his own need for the funding of his defense in this case had become the priority of this "family plan."

Leaving aside at this time the application of Rule 403, there is no question that evidence relating to any actual and realized interest of the Defendant in the insurance proceeds would be relevant in this case. Speaking hypothetically, if the insurance money had been placed with an institutional trustee and payments had already been made for educational purposes for the beneficiaries, it is likely that the defense would offer that evidence as relevant, exculpatory evidence. Evidence of the disposition of the insurance payments does not become irrelevant because it could tend to show that the money was used for the benefit of Mr. DeMocker – whether pursuant to a family plan or for some other reason.

Of course, the State has expressed a completely different interpretation of the evidence than that expressed by the defense. The State has indicated its intention to argue that Mr. DeMocker at all times exercised dominion and control over the insurance policies and, ultimately, the payment of benefits. The State wants to argue that both the payments of the proceeds for purposes of the defense in this case and the specific manner in which the funds were transferred are relevant to prove the Defendant's financial motive for committing the alleged crimes.

RULING

As previously stated by the Court, any ruling made on this issue at this time obviously has to be subject to the actual evidence offered or actually admitted at trial.

Taking into account the weighing of the probative value of the evidence and the danger of unfair prejudice and the other factors stated in Rule 403, and assuming, of course, proper foundation, the Court rules as follows:

(1) Evidence as to the ultimate disposition of the insurance proceeds would be admissible. Acknowledging that the defense has objected to the admission of all insurance or disclaimer evidence that arguably would be negative to the Defendant's position, the Court also notes that the conditional stipulation suggested by the defense includes such evidence. However, the Court also rules that evidence of the amount involved is admissible.

(2) Subject to the limitations stated in part (3) of this ruling, evidence relating to a witness's reason for his or her involvement in the transfer of the insurance funds is admissible.

(3) As the Court has previously ruled, any evidence or argument offered to suggest that the transfer of funds occurred in an unlawful manner, whether in a criminal or civil sense, is not admissible.

IT IS HEREBY ORDERED the Clerk of the Yavapai County Superior Court shall seal the Court's Ruling Re: Evidence, which shall remain under seal and not be opened except upon further order of the Court.

DATED: This 13th day of August, 2010.

Honorable Warren R. Darrow
Judge of the Superior Court